

REMARKS

Claims 1-20 were originally filed in the present application.

Claims 1-20 are pending in the present application.

Claims 1-20 were rejected in the December 9, 2008 Office Action.

Claims 1 and 11 have been amended herein,

Claims 1-20 remain in the present application.

Reconsideration of the claims is respectfully requested.

I. CLAIM REJECTIONS -- 35 U.S.C. § 103

In the December 9, 2008 Office Action, the Examiner rejected Claims 1-20 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,292,838 to *Nelson* (hereinafter, simply “Nelson”) in view of U.S. Patent Publication No. 2002/0039357 to *Lipasti, et al.* (hereinafter, simply “Lipasti”) and further in view of U. S. Patent Publication No. 2003/0212821 to *Gillies, et al.* (hereinafter, simply “Gillies”).

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. (*MPEP* § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992).) The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. (*MPEP* § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984).) Only when a *prima facie* case of obviousness is established does the burden shift to the Applicant to produce evidence of non-obviousness.

(MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993).) If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the Applicant is entitled to grant of a patent. (*In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).)

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must not be based on the Applicant's disclosure. (MPEP § 2142).

The Applicants respectfully disagree and traverses the §103 rejections.

Independent Claim 1, as currently amended, recites “[a] first MANET node comprising: a radio frequency (RF) transceiver capable of wirelessly communicating with other ones of said plurality of MANET nodes; and a controller capable of receiving incoming data packets from said RF transceiver and sending outgoing data packets to said RF transceiver, wherein said controller is further capable of implementing, with a MANET Routing Protocol module, a MANET routing protocol at a medium access control (MAC) layer by, at the MAC layer, (i) intercepting a first data packet associated with at least one of the incoming data packet and the outgoing data packet, (ii)

determining a first MAC layer address associated with said first data packet, and (iii) adding said first MAC layer address to said first data packet”

The Applicants submit that *Nelson, Lipasti* and *Gillies*, taken singularly or in combination, do not disclose at least the “said controller is further capable of implementing, with a MANET Routing Protocol module, a MANET routing protocol at a medium access control (MAC) layer” recited in independent Claim 1. In particular, it is submitted that secondary citation to *Gillies* does not remedy the conceded deficiency in the primary citation to *Nelson* and the conceded deficiency in the secondary citation to *Lipasti*. Accordingly, without conceding the propriety of the asserted combination, the asserted combination of *Nelson, Lipasti* and *Gillies* is likewise deficient, even in view of the knowledge of one of ordinary skill in the art.

The Office Action concedes that *Nelson* and *Lipasti* does not disclose a controller implementing “a MANET routing protocol at a medium access control (MAC) layer.” (Office Action, page 4). Nonetheless, the Office Action rejects independent Claim 1 contending that *Gillies* provides this necessary disclosure. (Office Action, page 3). This contention respectfully is traversed.

The Office Action argues that *Gillies*, (paragraphs [0048] and [0066]) teaches that a virtual MAC layer that is configured to carry other routing protocols. (Office Action, page 4). *Gillies* discloses an ad hoc network including a router device. (*Gillies*, [0044]). *Gillies* teaches that the virtual MAC is configured to carry other protocols such as RIP and ISIS. (*Gillies* [0066]).

The Applicants submit that the *Gillies* merely provides a short list of “other protocols,” including RIP, ISIS and LonWorks, BACNet, and FieldBus that the virtual MAC layer can carry.

However, not only does *Gillies* not disclose that the other protocols could be a MANET protocol implemented at the MAC layer, *Gillies* contains no disclosure as to how this would be accomplished.

Accordingly, in order to further prosecution, the Applicants have amended Claims 1 and 11 to recite “with a MANET Routing Protocol module”. The Applicants submit that *Nelson*, *Lipasti* and *Gillies*, taken singularly or in combination, do not disclose a MANET Routing Protocol module such that the controller can capable of implementing, with a MANET Routing Protocol module, a MANET routing protocol at a medium access control (MAC) layer as recited by Claim 1. As such, the combination of *Nelson*, *Lipasti* and *Gillies* does not render obvious independent Claim 1 of the instant application.

Accordingly, the Applicants respectfully request that the § 103 rejection with respect to Claim 1, and its dependent claims, be withdrawn.

The Office Action argues Claim 11 with Claim 1. Independent Claim 11, as currently amended, recites, inter alia, “implementing a MANET Routing Protocol module to: at a medium access control (MAC) layer, intercepting a first data packet associated with at least one of an incoming data packet and an outgoing data packet; at the MAC layer, determining a first MAC layer address associated with the first data packet; and at the MAC layer, adding the first MAC layer address to the first data packet. Claim 11 recites elements analogous to those recited in Claim 1. Therefore, Claim 11 is allowable for at least the same reasons as Claim 1.

Accordingly, the Applicants respectfully request that the § 103 rejection with respect to Claims 11, and its dependent claims, be withdrawn.

The Applicants respectfully disagree with the Office Action's rejections of Claims 1-20 based on additional erroneous interpretations or misapplications of *Nelson*, *Lipasti* and *Gillies* to at least some of Claims 1-20. However, Applicants' arguments regarding those other shortcomings of *Nelson*, *Lipasti* and *Gillies* are moot in view of the arguments above. The Applicants reserve the right to dispute in future responses to Office Actions the appropriateness and application of *Nelson*, *Lipasti* and *Gillies* to the claims of the present application, including the right to dispute assertions made in the December 09, 2008 Office Action.

SUMMARY

For the reasons given above, the Applicants respectfully request reconsideration and allowance of the pending claims and that this application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@munckcarter.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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